

loan servicers are generally not true debt collectors even if they may be deemed to be a "debt collector" under the FDCPA with respect to a small percentage of their loans. A separate set of rules in the Real Estate Settlement Procedures Act requires servicers of first lien loans to provide notices related to the borrower's right when servicing is transferred. The special FDCPA notices may convey the misleading impression that the loan has been referred to a traditional, independent debt collector, when, in fact, all that has happened is that the servicing rights have been transferred from one servicer to another—often as part of a larger portfolio of performing loans.

As an alternative to following the special procedural requirements of the FDCPA, some servicers decline to accept any delinquent loans. When an acquiring loan servicer takes this approach, the perverse result may be that the holder of the servicing rights who no longer wishes to service these loans may subject these delinquent loans to more aggressive collection action than would otherwise take place if the acquiring servicer had been willing to accept those loans.

The legislation I am proposing here today is intended to address the problems created when the FDCPA's procedural requirements are applied to residential mortgage loan servicers. The legislation would apply only to first lien residential mortgage loans that are acquired by bona fide loan servicers, not professional debt collectors. It would exempt them only from the "Miranda" notice and the debt validation provisions of the FDCPA.

Importantly, all of the substantive protections under the FDCPA would continue to apply to any loan as to which the servicer is not exempt as a creditor. These provisions will allow residential mortgage loan servicers to treat the few loans subject to the FDCPA in the same way they treat all other loans and will thus reduce unnecessary administrative costs incurred identifying and separately handling these accounts. In addition, once a servicer is considered a "debt collector" under the FDCPA, the borrower would have a right to request a "validation statement"—a statement of the amount necessary to bring the loan current and to pay off the loan in full as of a particular date.

I think it is also important to note that this proposed legislative clarification has the full support of the Federal Trade Commission, the agency with enforcement jurisdiction over the FDCPA. As a matter of fact, the FTC has consistently gone on record in its Annual Report to Congress as supporting legislative clarification in this area. The FTC's 21st Annual Report to Congress provides as follows:

Section 803 (6) of the FDCPA sets forth a number of specific exemptions from the law, one of which is collection activity by a party that "concerns a debt which was not in default at the time it was obtained by such a person." The exemption was designed to avoid application of the FDCPA to mortgage servicing companies, whose business is accepting and recording payments on current debts. (March 19, 1999 Report)

The report then goes on to make specific recommendations to Congress:

The Commission believes that Section 803 (6)(F)(iii) was designed to exempt only businesses whose collection of delinquent debts is secondary to their function of servicing current accounts. . . . Therefore, the Commission

recommends that Congress amend this exemption so that its applicability will depend upon the nature of the overall business conducted by the party to be exempted rather than the status of individual obligations when the party obtained them.

I am pleased that several of my colleagues on the House Banking and Financial Services Committee, namely Reps. JACK METCALF (WA) and WALTER JONES (NC), are also sponsoring what I hope will be bipartisan legislation to clarify the FDCPA as it applies to residential loan servicers. Mr. Speaker, I hope we can move early in the next session to address this issue in both Committee and on the House floor.

IN MEMORY OF WILLIE J. COTTON,  
JR.

### HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. ETHERIDGE. Mr. Speaker, I rise today in honor of the grandfather of Bailey Cotton, Seth Cotton, Emma Cotton, Justin Sloan, Matthew Evans and Leslie Evans; the father of Betty Evans, June Sloane and Dwight Cotton and the husband of Iris Lee Cotton. I rise in honor of Mr. Willie J. Cotton, Jr. who passed away on October 27.

Mr. Cotton was a native of Harnett County, North Carolina. He was a past county commissioner and served Harnett County in office for 12 years. Mr. Cotton served our country in World War II and was a lifelong member of Kipling United Methodist Church.

As North Carolina's former Superintendent of public education, I know what a battle it is to build quality schools for our children. Improving schools for our children is my life's work. Mr. Cotton took this battle on as a county commissioner to build better schools in Harnett County. There aren't many times that a person in public service takes a stand for the good of future generations that can cost them their political career. He knew he could lose but he voted anyway, and children in my home county have been in modern facilities since 1975. My own children and the children of Harnett county owe thanks to a man most of them never knew.

That is why, Mr. Speaker, I stand here today: To honor Mr. Cotton and to pay my respects to his family and my debt of gratitude. We have lost a great man, and I am proud to continue his fight for better schools for our children.

### THE SMALL BUSINESS FRANCHISE ACT

### HON. HOWARD P. "BUCK" McKEON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 18, 1999

Mr. McKEON. Mr. Speaker, I am a recent cosponsor of H.R. 3308, the Small Business Franchise Act introduced by Representative HOWARD COBLE. Today, I include for the RECORD testimony from a recent Judiciary Commercial and Administrative Law Subcommittee hearing on this legislation. During

this hearing a constituent of mine, Patrick Leddy, testified about his dealings as a franchise owner. Because of his very moving testimony, I became a cosponsor of this legislation. I wish to thank him for his words and include them in the RECORD today.

STATEMENT OF PATRICK JAMES LEDDY, JR.

My name is Patrick James Leddy Jr. I have owned and operated a Baskin-Robbins 31 Flavors franchise in Newhall, California since August 1, 1986, a total of 13 years. I am also a 26 year veteran firefighter with the Los Angeles City Fire Department. I purchased my franchised business to supplement my income, and to prepare my wife and I for our retirement. In 1996 my wife and I became very discouraged with the manner in which our Franchisor, which is a wholly owned subsidiary of a foreign corporation, was treating its franchisees. After careful consideration and after seeing sales at our fellow franchisee's stores plummet as a result of the placement of new stores and drastic changes to the system which we had originally purchased, we decided to sell our store.

In February of 1997, three months after notifying Baskin-Robbins that we were interested in selling our store, we received a notification that Baskin-Robbins was considering a location for a new store located in a shopping mall, a mere two miles from my store and well within the market from which we draw a large number of our customers.

Later that month my wife and I met with our district manager to discuss our ability to sell our store and the tremendous impact the new store would have on our existing store. To our surprise the representative from Baskin-Robbins agreed with us, and suggested that if Baskin-Robbins were to go forward with this plan, how would we feel if they were to purchase our store, and then sell both our store and the new store as a package to a new buyer? We agreed that this would be acceptable to us. Whereafter, the Baskin-Robbins representative offered us \$40,000 dollars less than what I had paid for this store seven years earlier, and after an additional \$70,000 dollars I paid for improvements which were required by Baskin-Robbins. We were appalled at this offer, but were advised by the Baskin-Robbins representative that we really should consider his offer, because if Baskin-Robbins does elect to place this new store at the proposed location, our store wouldn't even be worth that amount.

Thereafter in April of 1997, and pursuant to an internal policy of Baskin-Robbins, which is not binding on Baskin-Robbins, and which is rarely followed by the company, I submitted to my district manager my response to this Baskin-Robbins proposed new location. He assured me that he would notify me of any developments as they occur, and that we would be notified promptly, once a determination had been made.

In June of 1997, after several unsuccessful attempts to learn whether Baskin-Robbins would proceed with the new store my wife called our district manager and explained to him that we needed immediate information on what the company intends to do about this new site, because we have had several prospective buyers for our store that were disinterested once we disclosed to them Baskin-Robbins plan. The Baskin-Robbins representative advised us not to disclose the information about the new store to our prospective buyers.

In July of 1997, our local neighborhood magazine publications reported that a new Baskin-Robbins would be open two miles from our store. We were shocked. Two days after this news story appeared, and after numerous telephone calls to Baskin-Robbins on our part, we finally received official notification from Baskin-Robbins about the new store.